



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 31, 2011

Ms. Sharae N. Bassett
Assistant City Attorney
City of Beaumont
P.O. Box 3827
Beaumont, Texas 77704-3827

OR2011-04474

Dear Ms. Bassett:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 413133.

The City of Beaumont (the "city") received a request for injury reports regarding certain employees who work at or for the city's police department and who were injured in 2010.¹ You claim the submitted information is excepted from disclosure under sections 552.101 and 552.117 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.²

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses section 402.083(a) of the Labor Code, which states "[i]nformation in or derived from a claim file regarding an employee is confidential and may not be disclosed by the [Division of Workers' Compensation of the Texas

¹You state the city received clarification from the requestor. See Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information); see also *City of Dallas v. Abbott*, 304 S.W.3d 380, 387 (Tex. 2010).

²We assume the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

Department of Insurance (the "division") except as provided by this subtitle[.]" Labor Code § 402.083(a). In Open Records Decision No. 533 (1989), this office construed the predecessor to section 402.083(a) to apply only to information the governmental body obtained from the Industrial Accident Board, subsequently the Texas Workers' Compensation Commission, and now the division. See Open Records Decision No. 533 at 3-6 (1989); see also Labor Code § 402.086 (transferring confidentiality conferred by section 402.083(a) of the Labor Code to information other parties obtain from division files). Accordingly, information in the possession of the city that was not obtained from the division may not be withheld on the basis of section 402.083(a). Although you assert the submitted information is confidential pursuant to section 402.083, you provide no representation, and the documents do not reflect, the city received these records from the division. Therefore, you have failed to demonstrate the applicability of section 402.083 to the information at issue. Thus, the city may not withhold any of the submitted information under section 552.101 on this basis.

We note the submitted information includes information excepted from disclosure under section 552.102(a) of the Government Code.³ Section 552.102(a) excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Gov't Code § 552.102(a). The Texas Supreme Court recently held section 552.102(a) excepts from disclosure the dates of birth of state employees in the payroll database of the Texas Comptroller of Public Accounts. *Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex. & The Dallas Morning News, Ltd.*, No. 08-0172, 2010 WL 4910163 (Tex. Dec. 3, 2010). Having carefully reviewed the information at issue, we have marked the information that must be withheld under section 552.102(a) of the Government Code.

Section 552.117(a)(2) of the Government Code excepts from disclosure the home address, home telephone number, social security number, and family member information of a peace officer, as defined by article 2.12 of the Code of Criminal Procedure. See Gov't Code § 552.117(a)(2); Open Records Decision No. 622 (1994). We note section 552.117 is also applicable to personal cellular telephone numbers, provided the cellular telephone service is not paid for by a governmental body. See Open Records Decision No. 506 at 5-6 (1988) (section 552.117 not applicable to cellular telephone numbers paid for by governmental body and intended for official use). We have marked the information pertaining to licensed peace officers, which the city must withhold under section 552.117(a)(2) of the Government Code.⁴

³The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions.

⁴For the individual at issue who is not a licensed peace officer, we note section 552.024 of the Government Code authorizes a governmental body to redact the home address, home telephone number, social security number, and family member information of a current employee of a governmental body who requests that this information be kept confidential without the necessity of requesting a decision from this office. Gov't Code § 552.024(c); see *id.* § 552.024(c-1) (requestor may appeal governmental body's decision to withhold information under section 552.024(c) to attorney general), .024(c-2) (governmental body withholding information pursuant to section 552.024(c) must provide certain notice to requestor).

However, a cellular telephone number may only be withheld under section 552.117(a)(2) of the Government Code if the officer pays for the cellular telephone service.

In summary, the city must withhold the information we have marked under section 552.102(a) of the Government Code. The city must withhold the personal information of a licensed peace officer we have marked under section 552.117(a)(2) of the Government Code. However, the city may not withhold a cellular telephone number unless the officer pays for the cellular telephone service. The city must release the remaining information.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Mack T. Harrison
Assistant Attorney General
Open Records Division

MTH/em

Ref: ID# 413133

Enc. Submitted documents

c: Requestor
(w/o enclosures)